

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1261 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgement?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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VISNAGAR MALVAHAN VAHVAHAR

Versus

PATEL RAMABHAI VITHALBHAI

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Appearance: MR PK JANI for Petitioner

MR MEHUL SHARAD SHAH for Respondent No. 1, 6

Mr.Uday R. Bhatt,

Assistant GOVERNMENT PLEADER for Respondent No. 5  
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CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 30/06/2000

ORAL JUDGEMENT

The petitioner is the original defendant No.2, against whom as well as against the State of Gujarat, through the Recovery Officer, respondent Nos.1 to 4 herein, have filed a suit, being Regular Civil Suit No.254 of 1992. Originally, the said suit was filed against the State of Gujarat, through the Recovery Officer only. Subsequently, the present petitioner gave an application for joining as party. That application was allowed and that is how the petitioner is joined as defendant No.2 in the suit.

The suit of the plaintiffs is that the plaintiffs' father Vithalbai Motibhai Patel was occupying certain properties and after his death, the aforesaid properties have been partitioned between plaintiffs' elder brother Laxmanbai and rest of the plaintiffs. That there was an oral partition between said Laxmanbai and the present plaintiffs and by virtue of the said partition, Laxmanbai became owner of Survey

Nos. 302/2 and 302/4. It was agreed between brothers and sisters that so far as the house on Survey No.337 and property at Survey No.341 are concerned, the same should be transferred in the name of their mother Kankuben and accordingly, so far as Survey Nos. 337 and 341 are concerned, the said property is running in the name of their mother Kankuben. According to the plaintiffs, their mother Kankuben had expired on 26th March, 1991. It is also the case of the plaintiffs that their brother Laxmanbhai was having his independent business and for the said business, he had purchased motor truck. The aforesaid purchase of truck was not made on behalf of the joint family or for the benefit of the joint family and the aforesaid transaction was an individual transaction of Laxmanbhai for his own personal business. The plaintiffs came to know about a Notification, by which the properties in question were sought to be auctioned by the Special Recovery Officer for the purpose of satisfying the debt on behalf of the present petitioner-Society. It seems that the petitioner-Society has given a loan to said Laxmanbhai for the purpose of his business. Since he failed to repay the said loan, suit was filed before the Board of Nominee's Court, being Arbitration Suit No.2419 of 1985, in which Award was given in favour of the petitioner-Bank on 30th April, 1988. Appeal against the said Award was also dismissed by the Cooperative Tribunal. Thereafter, for the purpose of recovery, proceedings were initiated and sale proclamation was issued on 7th of December, 1992 and auction was fixed on 22nd January, 1993. At that stage, and to be precise, on 28th December, 1992, the present suit has been filed by the plaintiffs, wherein they have prayed that so far as Survey Nos. 337 and 341 are concerned, the same belong to their mother Kankuben and after her death, they have become joint owners of the aforesaid property and, therefore, the aforesaid two properties cannot be sold in execution in pursuance of the aforesaid sale proclamation. The aforesaid suit, being Regular Civil Suit No.254 of 1992, for declaration and injunction, is accordingly filed, which is pending in the Court of Civil Judge (S.D.), Patan. Along with the suit, application Exhibit 5 was preferred by the plaintiffs for restraining the respondents from enforcing the sale proclamation in so far as the aforesaid two properties are concerned.

The trial court, after hearing both the sides, granted injunction as prayed for in the suit. The aforesaid order of the trial court was carried further in appeal by the present petitioner-society, being Civil Miscellaneous Appeal No.163 of 1995. The Assistant

Judge, Mehsana, Camp at Patan, by an order dated 8th July, 1996, dismissed the said appeal. The petitioner-Society has filed the aforesaid revision application, challenging the aforesaid order of the appellate court.

At the time of hearing of this revision application, Mr.P.K. Jani, learned Advocate for the petitioner, submitted that the order of the trial court, below Exhibit 5, as well as the order of the appellate court are required to be set aside as the civil court will have no jurisdiction to decide the suit in question and its jurisdiction is barred under the provisions of Section 166 of the Cooperative Societies Act. It is further submitted by Mr.Jani that even on merits, the plaintiff has failed to prove any prima facie case in their favour. According to him, their mother Kankuben died in the year 1991 and Award of the Board of Nominee is much prior in time, i.e. of 30th April, 1988 and the plaintiffs really want to delay the proceedings and want to challenge the certificate issued by the Recovery Mamlatdar under the Act even though the plaintiffs have no right, title or interest over the suit property. He, therefore, submitted that the courts below have gravely erred in law as well as in jurisdiction in granting the injunction as prayed for by the plaintiffs.

Against the aforesaid arguments of Mr.Jani, it was submitted by Mr.Shah, learned Advocate for the respondents, that the defendants have no right to auction the property, which belongs to the present respondents and the certificate issued under the Land Revenue Code, by which the entire property is ordered to be auctioned is absolutely illegal and the plaintiffs, being the owners of part of the aforesaid suit property, cannot be deprived of the possession of the same straight away, enforcing the aforesaid certificate at the hand of the Recovery Officer. It was submitted by Mr.Shah that the plaintiffs are not challenging the order of the Board of Nominee in any manner. They are merely asserting their right over the suit property and since they are not parties before the Board of Nominee, and since the property in question belongs to them, or in any case, at least, they are the co-owners of the suit property, it is not open for the defendants to execute the impugned notice against them for the purpose of auctioning the property in question. He submitted that, therefore, looking to the prayer in the plaint, it cannot be said that the jurisdiction of the civil court is barred in any manner. He further submitted that so far as the merits of the revision application are concerned, since both the

courts have held that the plaintiffs have got prima facie case in their favour and, therefore, injunction is granted and in view of the decision of the Supreme Court in Hindustan Aeronautics v. Ajit Prasad, AIR 1973 SC 76, this Court should not take contrary view and not vacate the injunction, which is already prevailing since considerable time.

So far as the question of jurisdiction is concerned, since the substantive suit is pending before the civil court, I refrain from expressing any opinion at this stage, especially when the civil court will have to decide the aforesaid question at the time of giving answer to the issue of jurisdiction, which might be framed and which might be arising out of the pleadings of the parties. Looking to the controversy in question, it is not simple to give answer about the jurisdiction at this stage because if any opinion is expressed at this stage, it will affect the rights of the parties. In that view of the matter, the aforesaid question about jurisdiction is left to the trial court and the same may be decided in accordance with law at the time of hearing of the suit. So far as the merits of the suit are concerned, the trial court has found that the certificate issued under the Land Revenue Code cannot be enforced against the present plaintiffs as they have got some interest in the suit property. The appellate court, of course, has not decided the appeal by taking into consideration various points and the order of the appellate court is not very happily worded, but the fact remains that the interim order is in force since 1992 and at this stage, it cannot be said that the order of the courts below suffer from any jurisdictional error. In that view of the matter, no relief is required to be given to the petitioner in the present revision application. In view of the fact that the injunction application is granted by the trial court and the said order was confirmed by the appellate court, I would not like to interfere with the aforesaid order at this stage. Instead, it would be suffice if the original plaintiffs, i.e. the present respondents 1 to 4, are directed to maintain the status quo and they are specifically directed not to transfer, alienate or deal with the suit property in any manner till the civil suit is pending. Except granting the aforesaid prayer, no other prayer can be granted to the present petitioner at this stage and the injunction granted by the trial court or the order passed by the appellate court is not required to be interfered with.

However, looking to the fact that the suit is of

1992 and according to Mr.Jani, large amount of the cooperative society is held up because of this litigation, I direct the learned trial Judge to dispose of the aforesaid Regular Civil Suit No.254 of 1992, pending before the Civil Judge (S.D.), Patan by 31st December, 2000. The aforesaid suit was originally filed in the Mehsana Court and in view of the bifurcation of the said District, I am told that the suit must be lying in the Court of Civil Judge (S.D.), Patan. Both the sides have assured this Court that they will not ask for any unnecessary adjournments and they will cooperate for the earlier disposal of the aforesaid suit by the aforesaid period. They will see that the witnesses are kept present at the time of recording the evidence so that the suit is not required to be adjourned for that purpose. Mr.Shah has also stated before this Court that the original plaintiffs will not also transfer, or alienate the suit property and also will maintain the status quo as regards the suit property till the disposal of the suit. In that view of the matter, the trial court should see that in any case, the suit should be decided by the aforesaid date.

Civil Suit No.254 of 1992, which was filed initially in the Court of Civil Judge (S.D.), Mehsana is ordered to be decided by 31st December, 2000 even if the aforesaid suit is transferred to any other Court.

Subject to these observations, the C.R.A. is disposed of. Rule is discharged with no order as to costs.

30th June, 2000. ( P.B. Majmudar, J. )

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(apj)